IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16515 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

CHHOTUBHAI BABUBHAI VASAVA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 16515 of 2003

MR CHETAN K PANDYA for Petitioner No. 1

MS PAURAMI SHETH Ld. AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE N.G.NANDI

Date of decision: 04/03/2004

ORAL JUDGEMENT

1. Ms.Paurami Sheth, learned AGP has placed on record the affidavit in reply on behalf of respondent

no.2. Same is kept on record.

2. Heard Mr.C.K.Pandya, learned advocate for the petitioner and Ms.Paurami Sheth, learned AGP for the respondents.

3. In this petition under Article 226 of the Constitution of India, the detenu - Chhotubhai Babubhai Vasava, through his wife, has been challenging the order of detention dated 29.8.2003 (Annexure-A) passed by respondent no.2 under Section 3(1) of the Gujarat Prevention of Anti-Social Activities Act,1985 (hereinafter referred to as "the PASA Act") and quashing and setting of the said order.

4. In the grounds of detention, five cases under Section 66(1)(B), 65(A)(E) and Section 81 of the Bombay Prohibition Act have been referred to on different dates. Branding the detenu as a bootlegger, it has been stated in the grounds of detention that in all the cases registered against the detenu, number of Indian made english wine of other states along with motor-cycles have been recovered from the detenu. It is stated that the bootlegging activity of the detenu on a big scale endangers the standard of life and health of the public. Because of the anti-social activities, the detenu is an obstruction under the maintainace of public order. It is also alleged that if the detenu is released on bail then there is every possibility that he would continue indulging in such anti-social activity.

5. Challenging the impugned detention order, it has been submitted by Mr.C.K.Pandya, learned advocate for the petitioner that the impugned order of detention is liable to be quashed and set aside on the ground of absence of basis for observing that if the detenu is enlarged on bail then he would indulge in such anti-social activities and also on the ground that the activity of bootlegging by itself would not be an obstruction to the maintenance of public order and that besides being a bootlegger, the Court has to consider the other credible material if any, whether the activities alleged against the detenu is an obstruction to the public order or not.

6. It is submitted by Ms.Paurami Sheth, learned AGP that the activity of bootlegging by itself is sufficient to invoke Section 3(1) of the PASA Act. It is stated that all what is required to be seen is that the illegal activity of indulging in the sale of foreign liquor in the big quantity can have adverse effect on the standard of life and public health, and because of such

anti-social activity, the detenu has become an obstruction in the maintenance of public order.

7. In the case of Kanuji S. Zala Vs. State of Gujarat and others, 2000 (4) GLR 3256 in Para.4, it has been observed that, ".... in this case, the detaining authority has specifically stated in the grounds of detention that selling of liquor by the petitioner and its consumption by the people of that locality was harmful to their health. the detaining authority has also stated that the statements of witnesses clearly show that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed in those locality for some time. The material on record clearly shows that members of the public of those localities had to run away from there or to go inside their houses and closed their doors.

In Para.5, it is observed that, "What is required to be considered in such cases is whether there was credible material before the detaining authority on the basis of which a reasonable inference could have been drawn as regards the adverse effect on the maintenance of public order as defined by the Act. .... The observations made by this Court in the case of Om Prakash Vs. Commissioner of Police, 1989 Supp. (2) SCC 576 : AIR 1990 SC 496, that 'as in Piyush Mehta Case, (AIR 1989 SC 491), the material available on record in the present case are not sufficient and adequate for holding that the alleged prejudicial activities of the detenu have either affected adversely or likely to affect adversely the maintenance of public order within the meaning of Section 4(3) of the Act, and as such, the order is liable to be quashed' are to be understood in the context of the facts of that case."

In para.6, it is observed that, "As already stated earlier, in this case the detaining authority has specifically mentioned in the grounds that the activity of the detenu was likely to cause harm to the public health and that by itself is sufficient to amount to affecting adversely the public order as defined by the Act. The detaining authority has also stated that as a result of resorting to violence by the petitioner for carrying on his bootlegging activity, even tempo of public order has also disturbed on some occasions. In view of the material on record , it cannot be said that the satisfaction of the District Magistrate, in this behalf, was not reasonable or genuine."

8. Mr.Pandya has referred to the decision of the Division Bench in Letters Patent Appeal No.223 of 2000 in Special Civil Application No.554 of 2000 wherein the Division Bench in Para.4 has reproduced the observations in Para.5 by the Supreme Court in the case of Kanuji S. Zala (Supra). The Division Bench observed that, "observation cannot be picked in isolation but the order has to be read as a whole and reading the decision as a whole, it was necessary for the Court to consider the presence of credible material before the detaining authority has been insisted upon. The litmus test to find out as to whether it is a case of breach of public order or breach of public health is concerned, credible material has to be there. It has been observed that, "the judgement is to be read as a whole and even the observations which have been made by the Supreme Court in Para.6 of the judgement are to be considered in light of the earlier observations made in Para.5 where the presence of credible material before detaining authority has been insisted upon."

9. In the instant case, except the statement in grounds of detention, there is no credible material before the detaining authority on the basis of which a reasonable inference can be drawn as regards the adverse effect of the bootlegging activity of the detenu on the maintenance of public order. In the case of Kanuji S. Zala (Supra) as observed in Para.4 that statement of witnesses before the detaining authority clearly showed that the even tempo of public life was disturbed in those localities for some time and the material on record also showed that members of the public of those locality had to run away from there or to go inside their houses and closed their doors and in light of this evidence, the Supreme Court held that it cannot be said that the satisfaction of the District Magistrate in this behalf was not reasonable or no such material in the present case appears to have been placed before detaining authority so as to draw a reasonable inference as regards the adverse effect on the maintenance of public order.

10. Since this petition can be decided only on the point of obstacle to the maintenance of public order by the bootlegging activities of the detenu in light of above referred decisions of the Supreme Court, in my opinion, other contentions raised by the detenu are not required to be gone into.

11. Under the circumstances, the impugned detention order is liable to be quashed and set aside and petitioner set at liberty.

12. In the result, the petition is granted and accordingly allowed. The impugned order of detention dated 29.8.2003 (Annexure-A) passed by respondent no.2 against the detenu -Chhotubhai Babubhai Vasava is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

(N.G.Nandi,J.)

(vipul)